

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

THE STATE OF TEXAS, et al,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	Case No.:
	§	4:20-cv-00957-SDJ
GOOGLE, LLC,	§	
	§	
Defendant.	§	

STATUS CONFERENCE
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE

Thursday, April 18, 2024; 10:02 a.m.
Plano, Texas

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(Continued on page 2.)

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11 * * *

1 April 18, 2024

10:02 a.m.

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3 P R O C E E D I N G S

4 ---o0o---

5 THE COURT: Good morning. Please be seated.

6 MR. YETTER: Good morning, Your Honor.

7 THE COURT: We're here on cause number 4:20-cv-957,
8 the State of Texas, et al versus Google, LLC.

9 Why don't we have appearances from counsel, and we
10 can start with the plaintiffs.

11 MR. DEROSE: Good morning, Your Honor. Zeke DeRose
12 from the Lanier Law Firm on behalf of the Plaintiff States.
13 We have -- oh, I need to start off by sending Mr. Lanier's
14 apologies for not being in court this morning. As the Court
15 is aware, he is in a trial -- he has two trials up in Helena,
16 Montana. So he sends his apologies, but will be here next
17 time.

18 We've got Ashley Keller, co-lead counsel from
19 the Keller Postman law firm. You last I think heard from
20 Mr. Keller three years ago plus a day when we were discussing
21 a motion to transfer. Trevor Young from the Texas Attorney
22 General's office. Roger Alford from the University of Notre
23 Dame. Jonathan Wilkerson from the Lanier Law Firm. Mr. John
24 McBride from Norton Rose Fulbright, and Ms. Geraldine Young
25 from Norton Rose Fulbright. And James Lloyd, who is head of

1 civil litigation at the Texas Attorney General's office.

2 THE COURT: Thank you, Mr. DeRose.

3 Mr. Yetter?

4 MR. YETTER: Thank you. Good morning, Your Honor.

5 THE COURT: I'm not sure if your microphone is on.
6 You may want to double check that.

7 MR. YETTER: Good morning, Your Honor. It's
8 wonderful to be back. Paul Yetter on behalf of the
9 defendant, Google; and my colleague, Mollie Bracewell; and
10 our co-counsel from Freshfields, Rob McCallum; Justina
11 Sessions; and Lauren Vaca.

12 Thank you, Your Honor.

13 THE COURT: All right. Thank you, counsel.

14 So this morning, we have our monthly status
15 conference. As you know, this afternoon at one o'clock we
16 have oral arguments on the motions to dismiss. Just as a
17 preview, my plan for those is that we'll start with the
18 12(b)(1) motion, we'll hear argument on that motion. We'll
19 take a break, and then we'll come back and hear argument on
20 the 12(b)(6) motion. And I've allotted as much time as we
21 need in the afternoon for those motions.

22 I did notice that for the status conference, as of
23 late last week, the parties had not identified any issues
24 that the parties felt needed to be raised with the Court.
25 And so my first question for both sides is whether, since

1 that time, anything has arisen that you believe we should
2 discuss this morning.

3 Mr. DeRose?

4 MR. DEROSE: I'll just run up here. It will
5 probably be easier.

6 Yes, Your Honor. May it please the Court. I
7 don't -- we have a lot of issues on stack for the special
8 master this afternoon, so I don't envy him, but I think we're
9 going to make some progress between now and the afternoon.

10 I think we could, though, if it would please the
11 Court, give you just a general update of where we are in
12 discovery. Although I want to be respectful of the Court's
13 time, and I'm well aware that you're fully briefed on all the
14 motions practice, so I'm happy to walk through a couple of
15 quick updates if it pleases the Court, or if there is a
16 specific issue.

17 THE COURT: No; that's fine. You can go ahead and
18 do that. And I -- depending on what you are going to talk
19 about, I have one issue I want to visit with the parties
20 about, but we'll see if it's something that's raised in your
21 discussion, from the plaintiffs or defendant. But if not,
22 I'll just raise it at the end.

23 So go ahead, Mr. DeRose.

24 MR. DEROSE: Absolutely. Thank you, Your Honor.

25 So I wanted to tell you a little bit about where we

1 are right now; the depositions that are taking place,
2 including the state depositions; the third thing would be a
3 quick note on the coordination with the, I guess we'll call
4 them, companion cases; and then some third-party discovery
5 related to Meta, which Your Honor had just granted recently.

6 As the Court's aware, the States provided an
7 advisory last week detailing out Exhibit B to our logs and
8 the various claims. Your Honor asked for States and reliefs
9 sought. We had a back and forth with Google and entered a
10 clarifying one. There were three issues that needed to be
11 clarified. Louisiana is, in fact, seeking penalties for
12 antitrust. Indiana is seeking attorney's fees for antitrust.
13 And Missouri is seeking attorney fees for antitrust. And so
14 to the extent any questions still arise from Google, we're
15 happy to work with them as we move forward with these
16 depositions.

17 Discovery is though ongoing. We have 15 days left
18 of fact discovery, and about 29 left until we get to expert
19 reports being due. There were four depositions taken before
20 we were remanded to Your Honor. There have been six since
21 then -- since about March or April; two of those have been
22 30(b)(6) depositions. We have eight that are scheduled for
23 the next two weeks.

24 We were conferring with counsel for Google.
25 There's no want for work, just want for time. We're

1 double-tracking and triple-tracking depositions. There are
2 about seven depositions that are outstanding, either the
3 special master is dealing with whether or not we can take
4 them, or Google has notified us that they're objecting or
5 that they no longer represent the witness.

6 Then we have twelve issues related to DTPA
7 discovery that we're getting in and/or in their individual
8 capacity because we have already designated a couple of them
9 as 30(b)(6) witnesses. The rough math on that is 46. Your
10 Honor has only given us 40. The delta there, though, I think
11 is some of these are 30(b)(6) witnesses, and there's a
12 structure in your scheduling order that allows for, you know,
13 if you take a shorter deposition or whatnot.

14 Based on what rulings we get today or in the coming
15 weeks, we'll adjust those, and we think we, as of now, we'll
16 stay within Your Honor's parameters.

17 The States were noticed for deposition. We have
18 given Google all of the names, all of the dates, and all of
19 the locations for all 17 states that look like they will
20 occur by May 3rd. I think we're waiting on a couple of
21 confirmations from Google on that.

22 I will note that the general counsel for the Texas
23 Attorney General's office sat for a deposition yesterday.
24 That was the lead deposition, if you will, for the States.
25 We were in Austin for about twelve hours there. And we may

1 hear some of that later today with Mr. Moran.

2 Third topic, coordination and Meta. And I'll be
3 finished except asking --

4 (Court reporter clarification.)

5 MR. DEROSE: Except answering whatever the Court
6 would like me to entertain.

7 The -- there's still ongoing attempts to coordinate
8 in the wake of not having a coordination order, I guess, and
9 we know some of this will be piecemeal, if you will. There
10 are some efforts by the MDL plaintiffs in the MDL to get
11 certain discovery or depositions. There are some outstanding
12 questions of what happens when we have cross-noticed
13 depositions and we're sitting back to back on Monday and
14 Tuesday. Are we permitted to sit in on Monday? Are they
15 permitted? I think that'll all get worked out.

16 I will note that out of the discovery in the
17 Eastern District of Virginia, and Mr. McCallum kind of led
18 the effort on this, is proposing a joint stipulation to get
19 third-party documents out of or from the E.D.V.A. case into
20 our case. The issue we have with that, one is timing;
21 because of the protective order, there's a seven-day
22 objection period. We're running a little bit out of time.
23 The other issue is it's a little bit of a piecemeal approach
24 because we've got to figure out what is missing besides that
25 third party -- besides those third-party documents.

1 Simultaneously, the Department of Justice has just
2 filed a motion, which Your Honor may or not -- may or may not
3 be aware of --

4 THE COURT: I've seen the motion and the response.

5 MR. DEROSE: I figured you might have -- seeking to
6 put in place the coordination order as if we were still part
7 of the MDL on October 2nd. Google filed a response, as you
8 noted, last night objecting.

9 And so one of those two things will play out or
10 some variation of them, but we just wanted to let the Court
11 know that we are just looking for the fastest, easiest way
12 for a free flow of information. Obviously, the coordination
13 order, if it was an order entered by Magistrate Judge
14 Anderson, we would then present it to Your Honor. But we
15 just want to get the documents and the information, and make
16 sure we're all on the same page.

17 Last thing, number four on my list, is Meta. The
18 Court lifted the stay on March 22nd related to the NBA. We
19 issued a subpoena to Meta on March 29th. Meta has agreed to
20 give us a date, that's actually one date, on May 2nd -- not
21 before, not after -- in London. So it sounds like we're
22 going to London.

23 What we're trying to do in the interim of that is
24 figure out do we have all the documents needed to take that
25 deposition. Because as we've discussed, that discovery has

1 been stayed, even though our initial requests for Meta
2 discovery go back to January of 2023.

3 We just found out last night -- and you can see
4 where the coordination order with the Department of Justice
5 will implicate this, because the Department of Justice has
6 their investigative file that we don't have -- at least, we
7 don't have the documents related to Meta.

8 We found out last night from Meta that there are
9 over three million Meta-related documents in the DOJ's
10 investigative file that they understand were provided to
11 Google. We have not yet had an opportunity to talk with
12 counsel about that. Although to be fair, Mr. McCallum and I
13 discussed the fact that when the investigative file was
14 produced to the MDL and/or the States, that Google, in
15 accordance with Judge Castel's order, had removed that NBA
16 discovery. So the breadth of that is not yet known, or the
17 timing of that is not yet known.

18 But we are receiving discovery from Google related
19 to DTPA. We've got a couple hundred thousand documents, I'm
20 told, either were produced last night or will be produced
21 today. We're also getting blow-backs from privilege log
22 challenges that amount to at least 40,000 or so documents.
23 So just a general update, Your Honor.

24 THE COURT: All right. So Mr. DeRose, since I have
25 you up there anyway, the topic I had or the issue I wanted to

1 visit with you about has to do with the pending motions to
2 quash that were made by three Texas state agencies. As you
3 all know, I have an R and R from our special master, and I
4 think we're in the period for objections on it. But I wanted
5 to visit with the States about this because, you know,
6 candidly, this was a bit of a head scratcher for me.

7 MR. DEROSE: That makes two of us, Your Honor.

8 THE COURT: So, you know, the special master's R
9 and R lays this out I think pretty well. The State of Texas
10 is here leading a group of states. These three agencies are
11 exactly that, arms of the State of Texas. They're not
12 political subdivisions. They're not counties. They are not
13 municipalities. They're arms of the State of Texas.

14 And my view, and you can let me know if I've got a
15 mistake here, but, is that when the State of Texas comes into
16 court, at a minimum it's representing all the arms of the
17 state. And so I suppose at the outset I find it puzzling
18 that Google is being directed to send subpoenas to state
19 agencies, as opposed to the state simply collecting that
20 information and organizing this.

21 And I think that process, which to me seems a very
22 indirect and odd process -- but you can enlighten me if I'm
23 just missing something -- seems like that is part of what
24 created this issue. The fact that Google is having to go
25 around and send subpoenas, and then these agencies have the

1 idea that, well, you know, now we're going to assert
2 sovereign immunity -- and, you know, I think at the outset,
3 there's not many times that we, as lawyers, get to use the
4 words "a fortiori. But I think under *Lapides*, when you
5 invoke a federal court's jurisdiction by removal and that
6 waives sovereign immunity, then I think when you file an
7 original action in federal court on behalf of the State of
8 Texas, you are waiving sovereign immunity for the state and
9 all arms of the state. That seems to me to be
10 uncontroversial.

11 So what I find concerning about this, to put a
12 finer point on it, is both sides in this case have discovery
13 obligations, and I understand it's asymmetrical to some
14 degree here in terms of what Google has in its possession and
15 what the States are going to have in their possession, but
16 still meaningful discovery obligations on both sides. And I
17 get concerned when I see anything, particularly on the
18 schedule we're on, that looks like it may unnecessarily delay
19 matters.

20 And what further concerns me is, having read your
21 advisory and the 90-plus page attachment to the advisory
22 which includes a lot of discovery responses that, as far as I
23 can tell, have other states also directing Google to what it
24 seems to me to be a very indirect way of getting discovery
25 that it seems to me -- and, again, you can enlighten me --

1 the States should in the first instance be collecting. And
2 indeed, I'm not sure how much of this should be part of
3 initial disclosures, not even discovery requests. So maybe
4 you can help me out on that.

5 MR. DEROSE: Thank you, Your Honor. And I agree
6 with what you said. And it's been a little bit of an
7 interesting dance for us with the various sovereign states
8 because each state is set up differently. The attorney
9 general's office for a given state has sometimes an
10 attorney-client relationship with an agency and sometimes
11 they don't. Sometimes there is an ability for a state -- a
12 couple of the states are able to take on, if asked by a given
13 agency, to be the representative and the lawyer, and then you
14 get a little bit of an easier path forward.

15 With the State of Texas -- and we do have Mr. Lloyd
16 here from civil litigation to make sure that I don't speak
17 out of turn -- but my understanding is the relationship in
18 Texas is that we do not represent these agencies. Now, that
19 doesn't get to your second point, which is how do we move
20 this along and coordinate and do what we should do.

21 I will note that even as government enforcers, with
22 objections to sitting for a deposition, we heard the Court
23 loud and clear, our clients all heard the Court loud and
24 clear, we just set dates for depositions. We have also been
25 asked at a given time by the special master to help

1 coordinate discovery from those agencies in various states.

2 For example, if a third-party advertiser or
3 advertising group is used, technically there is an argument
4 that Indiana's AG's office doesn't have custody or control
5 over those documents, but what was happening is Google was
6 having to kind of do an end around. So we stepped in, got
7 everybody on a phone call, got those documents. And what I
8 hear from Your Honor is we need more of that and less of what
9 came a couple of weeks ago.

10 I will represent to the Court that the
11 Administrative Law Division in the State of Texas -- and in
12 no way is this an excuse for a disagreement -- is the agency
13 or the group that represents these agencies. And so I -- we
14 were surprised when we saw the motion. But what we can do --
15 one, I think first and foremost, is there is an objection
16 period. We need to get you an answer on if there are going
17 to be objections or not.

18 More importantly, it seems as if these folks will
19 sit for depositions as I know various other agencies are
20 sitting for depositions, and they're on Google's calendar or
21 our calendar or my calendar, I guess, and so we need to make
22 sure those are set, those are scheduled, and that they move
23 forward; and whatever the administrative hang-ups may or may
24 not be, that we find a way to move this forward.

25 THE COURT: Right. I think the deadline on

1 objections is today. And I want to be clear that if there's
2 a reason, you know, why things need to be handled in that
3 manner, I'm certainly open to hearing it or seeing what it is
4 in writing. I articulated to you why I found it puzzling. I
5 won't belabor that. But as you suggested, Mr. DeRose, it
6 certainly seems to me, barring briefing from the States to
7 persuade me otherwise, that a process that has the States
8 that are the plaintiffs in this case directly involved in
9 collecting documents and getting people who need to be
10 rounded up for deposition, seems both the most efficient way
11 to proceed. And I will say that again at the moment it's
12 hard for me to understand why there was a subpoena process in
13 the first place.

14 But again, if that's something I had been meaning
15 to take up and I need to look at, we can certainly do that.
16 But I'm encouraged with your comments today, Mr. DeRose. And
17 I think given the schedule that we have, even if there were,
18 you know, some concerns amongst state agencies, I think that
19 moving the case forward should take priority.

20 MR. DEROSE: Agree, Your Honor. And I know
21 Mr. Yetter has a few things to say. We will get you an
22 answer today if there are going to be any objections. We'll
23 figure out how to do that. Someone's got a phone number.
24 We'll make a phone call.

25 We'll also commit today to work with Mr. Yetter's

1 team and Mr. McCallum's team if there are any outstanding
2 issues, not just with the States that we represent, but with
3 any of the sovereign states or Puerto Rico in this case, that
4 we will sit down and do whatever is needed to facilitate that
5 free flow of discovery, setting deposition dates, absent any
6 state's individual objections that we can't handle. But we
7 will do what we did before and we'll just make it happen.

8 THE COURT: That sounds like a very good plan. All
9 right. I appreciate it, Mr. DeRose.

10 MR. DEROSE: Thank you, Your Honor.

11 THE COURT: Mr. Yetter? And you can provide any
12 update from Google's side. I know Mr. DeRose touched on some
13 of the topics of where you all are in discovery, and then we
14 have the specific discussion about these motions to quash,
15 but you can address whatever you need to.

16 MR. YETTER: Thank you, Your Honor. I think going
17 forward, you need to always be suspect when the parties give
18 you a status update before one of these conferences to say
19 they have nothing to talk about because they obviously will
20 always have something to talk about, Judge.

21 But I will say I think the happiest -- one of the
22 happiest persons in the courtroom is the special master for
23 you bringing up this last issue because this is something we
24 were going to have to -- it's one less issue for him to have
25 to deal with. And I want to start with that, Your Honor, the

1 issue of whether these states must account for all of their
2 state agencies.

3 And I have never quite understood why we went about
4 doing this, but this started -- a little bit of background.
5 This started in the MDL. We, on behalf of Google, went to
6 the various states to get discovery about their agencies.
7 And South Carolina was the first one to take the position,
8 "You don't need to talk to me" -- the litigant, the party --
9 "go talk to my agencies," which we then did. And then the
10 agencies did what happened again here with the Texas
11 agencies, they claimed sovereign immunity. The district
12 judge overruled it. They appealed it. We're now in the
13 court of appeals on that very issue you just raised. It
14 makes no sense to me. But out of expediency, Google started
15 going to the various agencies.

16 Again, I completely agree with the Court's
17 position. The State of Texas is the litigant, not the Texas
18 Attorney General's Office or any specific agency, and so it
19 should answer on behalf of all of its agencies. It has --
20 what we've heard, Texas tells us "We've got so many agencies,
21 over 200, and we can't possibly answer on behalf of all of
22 them," even though the State is proceeding in its sovereign
23 capacity and in its parens capacity. We disagree. But
24 again, as a matter of expediency, we went to the agencies.

25 By way of update, the three agencies have not given

1 us dates. One has given -- one agency, and they're all
2 represented by the Texas Attorney General's office --
3 different lawyers, but the same office -- one, the lawyer
4 gave us a date, a tentative date, for one of the three
5 agencies, but not for two of them. But said that they
6 wouldn't confirm until this Court rules on this issue. So we
7 don't have dates on the calendar for any of the three.

8 This Court knows we did get documents from them.
9 And then they said, when it got to depositions, they were
10 immune under sovereign immunity.

11 Let me pause there and give a shout out to two of
12 the states. This has been only 15 of the states that have
13 taken that position. I will say Texas has led the way on
14 resisting any discovery of their agencies, including in the
15 30(b)(6) depositions that counsel just mentioned, which was
16 yesterday. But two of the states, Nevada and Alaska, did do
17 the collecting for agencies, as I understand it, themselves
18 and then produced it directly to us.

19 So two of the seventeen actually did what Your
20 Honor says they should have done. Fifteen, led by Texas, has
21 gone the opposite direction. So that leads me to -- so we
22 heartily agree and we hope that the States do not challenge
23 the special master's recommendation to the Court, and that
24 the Court can enter that order and we can move quickly on
25 getting these depositions scheduled and done, and do it

1 directly through the litigants, the parties, the States that
2 are pursuing this case.

3 Which leads to the deposition yesterday. A quick
4 update and, hopefully, I'll make this brief, Your Honor. On
5 discovery, there's been lots of discovery. The special
6 master has been very busy, as the Court knows. You've seen
7 all the papers. He's resolving issues quickly. The parties
8 are talking every day.

9 Google has -- you won't be surprised to hear that
10 Google believes that they've literally moved Heaven and Earth
11 to get this done. They have, at last count, 700 document
12 reviewers to get the information that they are producing done
13 and to get the privilege log re-review done that they
14 volunteered to do. There's been lots of issues on dashboards
15 there. There's a very extensive 30(b)(6) deposition that
16 took -- with the special master's assistance and a lot of
17 discussion between the parties, we think we've gotten that
18 all ironed out. Google has designated eight 30(b)(6)
19 witnesses to cover all the 107 topics.

20 Even then, we have an issue that we're going to
21 raise with the special master. One of the 30(b)(6) witnesses
22 that Google presented -- and this is, and I raise this with
23 the Court, in the vein of delay at this point in the case is
24 not a good thing -- is covering a substantial number, over
25 40, of the topics. He is a senior engineer. His name is

1 Nitish Korula, and he had been agreed to be deposed tomorrow.
2 He's prepared. He's ready to go, ready to be deposed
3 tomorrow. He's covering 42 topics.

4 By comparison, the State of Texas representative,
5 who was acting on behalf of the entire state and many of the
6 other states, covered 41 topics yesterday, in a long day, but
7 a single day. We've agreed to have this representative,
8 Mr. Korula, ready to go tomorrow to cover all 41, and the
9 States have basically cancelled it. We're going to ask the
10 special master to require that it go forward. We think at
11 this point cancelling a deposition of the 30(b)6) witness
12 who's covering a substantial number of the topics does
13 nothing but delay --

14 THE COURT: Can I ask -- sorry. Can I ask what the
15 grounds for the cancellation were?

16 MR. YETTER: Well, the --

17 THE COURT: And I'll ask Mr. DeRose.

18 MR. YETTER: I will let them speak for themselves,
19 but what the state told us is that because he's covering 42
20 topics and they're important topics, as the state conveyed to
21 us, there's no way they can get him done in the seven hours
22 that the rules allow, and so that we should set aside either
23 two or three days for Mr. Korula; and that they can't start
24 on Friday; they have to have those two or three days
25 consecutively. And so they've cancelled it.

1 Now, again, he is a senior engineer. He set aside
2 the time to prepare and the day on Friday to give this
3 deposition. We don't think they should have more than a day.
4 We've told them what would be reasonable at the end of the
5 day. This is exactly what happened yesterday with the Texas
6 representative. We covered a lot of topics. We had a little
7 bit longer in the day. Counsel very professionally allowed
8 for it to go a little bit longer than seven hours. We've
9 told them we're prepared to do the same thing as long as it's
10 efficiently taken and we think we can get it done. And it
11 will cover 42 of the 107 topics, which we think will be a
12 good step forward.

13 On --

14 THE COURT: Well, I may be able to save the special
15 master some work on this.

16 MR. YETTER: Your Honor --

17 THE COURT: I'll hear from Mr. DeRose, but my
18 inclination will be that you go forward with that deposition
19 and cover as much ground as you can possibly cover. And then
20 if the States need more time, they can certainly request more
21 time.

22 But I'll hear from Mr. DeRose and see if there's
23 some compelling reason not to do that, that seems to make
24 sense to me.

25 MR. YETTER: All right. Then, Your Honor, unless

1 you want to hear from Mr. DeRose right now, which I'm fine
2 with.

3 THE COURT: Yes.

4 So Mr. DeRose, in the interests of efficiency and
5 looking at our time table, I certainly understand the notion
6 that you may not be able to cover everything you need to
7 cover in that time period and given the number of topics, but
8 it certainly seems to make sense though to get started, get
9 as much done as you can and as soon as you can, and then if
10 you need more time, to take it. But I'm just looking at the
11 date we're on right now. And you can let me know if there's
12 a compelling reason to take something off the calendar that
13 was scheduled.

14 MR. DEROSE: Yes, Your Honor. And I may bring in
15 the A-Team here with Mr. McBride, who is handling the
16 technical side. The 42 topics vary, and we'll get into that.
17 And we begrudgingly, and if I'm not mistaken, made sure the
18 special master was on this correspondence because we took
19 Your Honor's direction from the February 15th hearing where
20 you said maybe you should do some 30(b)6)s, get some
21 dashboard stuff going. We issued our notices on February
22 21st. It took -- Your Honor, I'll get directly to your
23 answer of why. It took six weeks before we got a date. It
24 took six weeks before we got a name of a witness.

25 We did do a dashboard deposition in between then.

1 But the special master asked us on March 22nd to specifically
2 lay out, the day after we were with Your Honor, what are the
3 topics, what are the categories, broadly help Google figure
4 out how to put some witnesses together. We received
5 information back from Google on March 29th, gave them some
6 more information where there were gaps. There were gaps in,
7 "Hey, there's 30 to 50 of these topics that are not covered.
8 What's your intent?" With Mr. Korula, who is on 42 topics,
9 Mr. Gordon, the general counsel, was noticed -- or Texas was
10 noticed on things like retention -- he has been noticed, and
11 Mr. McBride can talk about this -- on the operation, design,
12 expected benefits of dynamic allocation, enhancement
13 allocation, reserve price optimization --

14 (Court reporter clarification.)

15 THE COURT: Take your time, Mr. DeRose.

16 MR. DEROSE: I have to get the words right
17 correctly myself. Reverse -- let me start over.

18 He's been designated on operation -- or his
19 testimony is, if we limit it, to operation, design, and
20 expected benefits of dynamic allocation, enhanced dynamic
21 allocation, reverse price optimization, dynamic revenue
22 share, unified pricing rules, open bidding, material features
23 at the Google AdX auction, as relevant to the Fourth amended
24 complaint. The question then also becomes is he only
25 testifying on the technical side, which Mr. McBride will

1 take, or is he also going to testify on these business
2 questions related to double quick acquisition and other
3 things?

4 The back and forth with opposing counsel, our
5 friends at Google, has been -- these seem really broad topics
6 and not doable in seven hours. The response was "You get
7 seven hours under the rules." We wanted to narrow down
8 specifically, are we going to get another chance to take
9 this? Or are you saying, "You've got 42 topics. That's ten
10 minutes a topic. Don't swear in the witness. Don't ask what
11 they've done to prepare," so on and so forth. And we've done
12 this back and forth for a couple of weeks where we've just
13 gotten -- the answer we did get, Your Honor, was, "If you
14 have a reasonable and discrete number of additional
15 unanswered questions at the conclusion of seven hours, Google
16 will be happy to discuss," which what we just wanted to know
17 is -- we've got, as Your Honor noted, 15 days left in
18 discovery. We're flying people all over. Even if we're
19 doing it remotely, is it going to be Mr. McBride? Is it
20 going to be a combination of that? Are we going to be able
21 to separate technical from business?

22 And so at the last point when we kept getting,
23 "Afterwards we'll discuss whether we'll give you more," we
24 felt that we were boxed in and had no -- we thought we were
25 going to waive our opportunity to do something different. I

1 will let Mr. McBride speak into any more of the why is this a
2 real issue, but --

3 THE COURT: Well, I'm happy to hear from
4 Mr. McBride, but I was going to note that, you know, from my
5 perspective -- and this is for both sides -- you know, I
6 fully understand, and I know the special master understands
7 the importance of these corporate rep depositions. And that
8 when you have a lot of topics and are getting into the
9 substantial I'm going to say substance of this case, getting
10 into the meat of this case, I'm certainly going to be open to
11 requests for additional time, if needed, because a witness is
12 covering a lot of ground.

13 And as Mr. Yetter was referring to your witness of
14 yesterday, and you're discussing a witness that Google has
15 who is covering a lot of ground, I'm certainly going to be
16 open to the notion of having more time because one witness is
17 covering a lot of ground under the corporate rep topic.

18 So I understand the concern about, you know,
19 communications between the parties. But, of course, you
20 know, if you're not agreeing, you're able to come to the
21 Court to get more time. That applies for Google as well.
22 And that's why, from my standpoint, I think we put a premium
23 on getting done what you can get done as efficiently and
24 quickly as you can. And if you need to come back and have
25 additional time, then you schedule that in there. And part

1 of the message I'm saying to both parties here is that it's
2 in this kind of circumstance corporate representatives who
3 are covering a lot of ground that is very helpful in moving
4 the case forward, that I'm going to be open to any request
5 for additional time that's reasonable given what can be
6 covered in a day with the witness.

7 MR. DEROSE: Thank you, Your Honor. I think that
8 would help. And we had requested, as Mr. Yetter I think
9 alluded to, that we think it will take three days. That
10 being said, I think what we're looking for, and maybe it is
11 the direction Your Honor is maybe inclined to go or
12 insinuating, is we just wanted to know we didn't get three
13 more questions. If it's two days, it's two days, that's
14 great, we'll let Google know we're going to do technical
15 topics. And so I think maybe we might seek either from the
16 special master or Your Honor today -- I think that would be
17 enough to give us an opportunity to say, Great, one day we'll
18 do technical; the other day we'll do business; we know who is
19 going to take the depo and when.

20 THE COURT: Right. I mean, my expectation will be
21 that we're talking about time increments as opposed to some
22 set of questions; that, you know, you're getting whatever
23 amount of additional time it is with the witness as opposed
24 to a number of questions. And I'm sure we can all think of
25 the reasons why that makes more sense.

1 MR. DEROSE: Absolutely, Your Honor. And I'll be
2 taking a broad stroke I think when I'm trying to categorize
3 at a high level the difference between technical and
4 business. It's just what is the scope of their, you know --
5 and what of the 42. It's a third of all of our topics that
6 we think we would like to take. And so we can either seek
7 that from you today and move forward, or we can talk to the
8 special master. I think we're happy. Unless somebody tells
9 me otherwise, you know, I think we can do it in two days. I
10 think if we knew that going in and we weren't -- if we don't
11 need two days, we don't need two days, we've got more to do
12 than anyone wants.

13 THE COURT: Well, I think we have the benefit of
14 all of us being together here today. We have a hearing in
15 the afternoon anyway. I know you're meeting with the special
16 master. But my thought is if both sides are agreeable to
17 streamlining, if we need to revisit in the afternoon any
18 particular topics or logistics on discovery going both ways,
19 I'm happy to take that up because we've got the afternoon
20 allotted for this case, in any event. And it's in everyone's
21 interests, including the Court's interest, to do whatever we
22 can to facilitate us moving as efficiently as possible.

23 So if we can make that, the process of resolving
24 disagreements, if we can go through the process of getting
25 them adjudicated today, I think that makes a lot of sense.

1 MR. DEROSE: I think we can get it done today, Your
2 Honor. We will report back before the 1:00 p.m. hearing. If
3 I may, I have one more thing and then we're done with this.

4 THE COURT: Yes.

5 MR. DEROSE: I just wanted to -- on the topic of
6 the agencies from the State of Texas, I just got confirmation
7 from the Administrative Law Division -- it didn't come
8 directly to me, my representation is still true, but I
9 don't -- that they're separate -- "We will not be filing any
10 objections to the special master's ruling." This is from
11 Ms. Lauren McGee. "I have already been in contact with
12 counsel for Google regarding possible deposition dates." So
13 the commitment is still held, Your Honor. Whatever we need
14 to do with the other states, we'll do so.

15 THE COURT: Well, with that representation, I'm
16 going to get my order entered on that today, just so we have
17 that processed. And I -- you know, to Mr. Yetter's point,
18 I've already heard from you, Mr. DeRose, that Texas itself is
19 going to work with the other states to move that process
20 forward with all state agencies.

21 MR. DEROSE: Yes, sir, Your Honor.

22 THE COURT: All right. Mr. Yetter, did you have
23 anything else you wanted to say?

24 MR. YETTER: Just a couple more things, Your Honor.
25 And I might suggest that it will go easier if we are -- if

1 the States directly, like Nevada and Alaska have done, deal
2 with us as opposed to pushing it off to the agencies.

3 I know the agencies now are not going to object to
4 the special master's recommendation, but I don't think it
5 would hurt if the Court at least gave us some guidance to the
6 States that they should be dealing directly with Google in
7 terms of agency discovery, depositions, and things like that.
8 So but that's up to the Court. That would be -- from our
9 perspective, that would be very helpful and efficient.

10 THE COURT: Well, let me -- I think I made this
11 point earlier, but just in case it's not abundantly clear, I
12 do think that the State of Texas and every other state should
13 be coordinating responses, documents, witnesses with all
14 state agencies. If there's a reason that the states can't do
15 that, the State of Texas or another state can't do that,
16 then -- and that becomes a real point of contention, then the
17 Court can take up an issue along those lines.

18 But my view is that the Attorney General's Office
19 of the State of Texas and the lawyers that its retained to
20 represent the State of Texas are representing these agencies,
21 and that means that they are the lawyers for the agencies and
22 they should be coordinating the agencies' response. And I
23 would expect the same to be true of the other states.

24 I have some experience with the role of the Texas
25 Attorney General and the power of the Texas Attorney General.

1 And so I'm happy to see briefing, if anyone wants to do
2 briefing, on why any state attorney general cannot do that in
3 this instance where they are representing the state in this
4 court. But my understanding and my expectation will be that
5 the state -- the States and, by that, the Attorney General's
6 Office are going to coordinate that. And, yes, they are
7 going to have to work through state agencies and maybe
8 in-house counsel at state agencies, and that's what the
9 attorney general does. I hope that's clear enough.

10 Anything -- I assume there's no questions.

11 Mr. Yetter, anything else?

12 MR. YETTER: Your Honor, that was very helpful.

13 Just one last couple of things. Before we focused
14 on the 30(b)6 deposition of Mr. Korula, I was conveying to
15 the Court, hopefully at a high level, that Google is doing
16 everything it can and there has been a substantial amount of
17 discovery. Our target is to finish fact discovery on
18 schedule as the Court has already set it.

19 We have some concerns that the States seem to be
20 moving toward positioning themselves to seek a delay of the
21 fact discovery cutoff. I raise this only because -- and I
22 hope that's not so, but I raise it only because that is -- we
23 are doing everything on our side, the Google side, to make
24 sure that that does not happen.

25 The Court has given lots of thought to the

1 schedule. I know that we originally asked for more time, but
2 the Court set the schedule, and we have tried very hard, and
3 we think successfully, to meet that schedule. There's a lot
4 to do between now and early May, but that is the schedule
5 that we're on. And with that, I don't have any other
6 comments, unless the Court has some questions for me.

7 THE COURT: No, not at this time.

8 Mr. DeRose, anything else you needed to say?

9 MR. DEROSE: May I?

10 THE COURT: Yes, go ahead.

11 MR. DEROSE: Just real quick. And by "quick," I
12 mean not talk too fast.

13 The State of Texas and the other states have been
14 adamant from the get-go that we want a trial date. Your
15 Honor gave it to us. It starts jury selection March of next
16 year, and we're looking forward to being here. But
17 Mr. Yetter did note -- and I feel obligated to at least put
18 this in context that delay in this case is not a good
19 thing -- it seems that the States will be moving toward
20 delay, and I hope that's not so. In briefing, they said it
21 looks like the plaintiffs are manufacturing some basis for
22 extending the fact discovery deadline.

23 We need the facts that we need to be able to try
24 the case to overcome which I'm sure will be hundreds of pages
25 of summary judgment and Daubert motions. For context, DTPA

1 discovery was requested November 13th, 2023. It took a
2 special master order on March 29th to start that document
3 production. We expect to get 200,000 of those documents
4 today -- or last night, to be candid -- with 15 days left.

5 The privilege log issues were noted November 22nd,
6 2023. It took a special master order recently to get those
7 blow-backs to start coming in in mid to late April. We have
8 as of now, from those 350,000 privilege log entries, 39,000
9 documents that were improperly withheld.

10 Meta discovery, which was first asked for in
11 January of 2023, Your Honor knows we just got a deposition
12 date, we're starting to get some information related to that.

13 For 30(b)6) topics, which was obviously a big part
14 of our conversation that was issued in February, we still
15 don't have 30 to 50 topics that have been given a witness,
16 or what are we doing on those, let alone dates. I'm almost
17 finished, Your Honor.

18 Dashboards. We were fighting with the MDL and
19 Google every single week for a year to say we think these
20 dashboards are relevant and responsive to outstanding
21 discovery. At the end of March, after a 30(b)6) deposition
22 and after multiple meetings with the special master, we
23 started getting these multi-whatever -- there were millions
24 of dashboards at Google, but we started getting dashboard
25 production, which is very helpful and exactly what we need to

1 move forward.

2 If we could squeeze this all in and would have
3 gotten some of this not in November, not in December,
4 January, maybe even February, we wouldn't be where we are.
5 But to say that these sovereign states are manufacturing some
6 basis for an extension, we are reacting to the reality of the
7 playing field.

8 We do not want to give up that trial date, and we
9 have been adamant about that and have been forcing the fact
10 that we think this can get done, but we are where we are,
11 regardless of how we got here or what could have or should
12 have happened. And we are extremely grateful for the
13 progress that Google has been making with us and with the
14 guidance of the special master. But we do need to discuss
15 the reality of if we're just now getting 200,000 documents
16 that none of us can review yet, and if these topics have not
17 been designated, what do we need to do and what are those
18 incremental changes that, hopefully, and our request would
19 be, if we get to this point, does not move that trial date,
20 but is there room in Your Honor's schedule to say these are
21 the specific depositions that will take place, nothing more,
22 nothing less.

23 But when we find out we have three -- potentially
24 three million documents related to our DTPA and Section 2
25 claims related to Meta, it's concerning that we may not have

1 enough time. And maybe I've just watched too much Final
2 Four, but I think arguably they have been effective with
3 running out this clock. And so we will have a conversation.
4 I think, of course, everything is appropriate for Your Honor,
5 but I know we don't need to get you into the weeds of
6 discovery.

7 I think we can make a suggestion of how do we
8 handle it. We want it to be very limited if we are going to
9 extend anything. We want it to be very specific to
10 depositions and what we're doing and what happens with the
11 expert report. But where I stand today, based on the
12 information that I've had, and how the last few months have
13 transpired, I'm not sure that 15 days is enough to get this
14 information in and these depositions scheduled, despite the
15 heroic efforts by Google and the States to double and
16 triple-track depositions.

17 THE COURT: All right. Thank you, Mr. DeRose.

18 Mr. Yetter, do you have -- yes, go ahead.

19 MR. YETTER: Your Honor, this is really not the
20 forum to go point by point and dispute counsel, but I did
21 want to correct one likely inadvertent fact that counsel
22 gave. On the DTPA discovery, which didn't get started for a
23 couple of months after they served the discovery in November,
24 and we responded in December, and the States then picked it
25 back up again earlier this year, we have produced 90 percent

1 of the documents already. So there isn't 200,000 documents
2 ready to go, and there's 20,000 documents left to be
3 produced. We believe either today or tomorrow they would be
4 produced. So 90 percent has already been produced.

5 There has been a tremendous amount, as counsel said
6 correctly, a tremendous amount of discovery in the last 60
7 days that Google has produced, all of which lines up for the
8 depositions that are scheduled. The States continue to
9 schedule more depositions; 18 third parties just in the last
10 two weeks, I believe, is the number. We are going to do
11 whatever it takes to get all that done. I raise this -- I
12 don't know if this is an issue for the Court today, but this
13 is an issue that we see coming, and that's why I wanted to
14 flag the Court on it.

15 THE COURT: All right. Thanks to both of you.
16 Again from, you know, my perspective, it seems to me that the
17 parties are working very hard to get everything done by the
18 close of fact discovery. And if issues are coming up with
19 regard to a potential requested extension of deadlines or a
20 request that certain things be done past May 3, you know,
21 those are issues that I anticipate would first be raised with
22 the special master. With that said, as I've mentioned in
23 terms of today, I think -- you may have other issues and
24 there's things that with regard to particular disputes that
25 remain active this afternoon, if the parties are agreeable to

1 streamline it, I may be able to just make some calls so that
2 we can keep this going.

3 But anyway, we will stand in recess for the moment.
4 I will see you all back at one o'clock.

5 THE COURT SECURITY OFFICER: All rise.

6 (Adjourned at 10:50 a.m.)

7 * * * * *

8 CERTIFICATE OF OFFICIAL REPORTER

9
10 I, Gayle Wear, Federal Official Court Reporter, in
11 and for the United States District Court for the Eastern
12 District of Texas, do hereby certify that pursuant to Section
13 753, Title 28 United States Code, that the foregoing is a
14 true and correct transcript of the stenographically reported
15 proceedings held in the above-entitled matter and that the
16 transcript page format is in conformance with the regulations
17 of the Judicial Conference of the United States.

18
19 Dated 20th day of April 2024.

20
21
22 /s/ Gayle Wear
23 GAYLE WEAR, RPR, CRR
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